STATE OF NEW HAMPSHIRE

DEPARTMENT OF STATE

BUREAU OF SECURITIES REGULATION

IN THE MATTER OF:))
Local Government Center, Inc.; Government Center Real Estate, Inc.; Local Government Center Health Trust, LLC; Local Government Center Property-Liability Trust, LLC; Health Trust, Inc.; New Hampshire Municipal Association Property-Liability Trust, Inc.: LGC – HT, LLC Local Government Center Workers' Compensation Trust, LLC; And the following individuals: Maura Carroll; Keith R. Burke; Stephen A. Moltenbrey;	Case No.: C-2011000036
Paul G. Beecher; Robert A. Berry; Roderick MacDonald; Peter J. Curro; April D. Whittaker; Timothy J. Ruehr; Julia A. Griffin; and John Andrews)))
RESPONDENTS)))

ORDER DENYING MOTION TO DETERMINE STATUS OF COUNSEL

BACKGROUND

A hearing on the issue of whether or not counsel representing corporate and company Respondents can be prevented from jointly representing corporate and company Respondents was conducted on October 24, 2011 in Concord, New Hampshire. The underlying matter arises from a staff petition submitted by the Bureau of Securities Regulation ("BSR") alleging that the named respondents, as they appear in the caption above, undertook a series of actions resulting in violation of RSA 5-B, "Pooled Risk Management Programs" and RSA 421-B. "Securities" and a resulting "Notice of Order" issued on September 2, 2011 by the Secretary of State granting the BSR petition. On October 11, 2011 BSR filed a "Motion to Determine Status of Counsel" in

these proceedings seeking to prevent Preti Flaherty, PLLP from jointly representing corporate and company Respondents listed above and collectively referred to hereafter as LGC and its affiliates. BSR also sought to prevent Preti Flaherty, PLLP from representing Maura Carroll, the present executive director of LGC. A hearing on the motion was scheduled and conducted. At the hearing before the undersigned presiding officer, parties were represented by counsel who made oral argument in support of their respective positions on all motions and had the opportunity to provide rebuttal in oral argument. Following his review of all relevant filings and the oral arguments made, the presiding officer determines as follows:

FINDINGS OF FACTS

- 1. On October 11, 2011 BSR filed a "Motion to Determine Status of Counsel" in these proceedings seeking to prevent Preti Flaherty, PLLP from jointly representing corporate and company Respondents due to the presence of a concurrent conflict of interest and the inability of certain corporate and company Respondents to waive the conflict. BSR also sought to prevent Preti Flaherty, PLLP from representing Maura Carroll in her capacity as manager of LGC HealthTrust, LLC and Property-Liability Trust, LLC due to the fact that Maura Carroll has never been a member of either entity and was unlawfully admitted as a manager of both.
- 2. In the same motion, BSR alleged that counsel for the Respondents had violated Rules 1.7(a) and 1.7(b) of the N.H. Rules of Professional Conduct
- 3. Prior to the hearing, BSR requested to withdraw the allegations that counsel for the Respondents violated the Rules of Professional Conduct. (See Paragraph #20-23 of BSR Motion)
- 4. During oral argument, BSR proffered that there are documents in the public record that suggest that the merger activities of the Local Government Center entities in 2003 were improvident and the corporate filings since then have been improper.
- 5. On October 21,2011 an "Objection to Motion to Determine Status of Counsel" was filed by Preti Flaherty, PLLP, counsel for the Local Government Center and its affiliates and Maura Carroll.

- 6. During oral argument, counsel for the Local Government Center entities and Maura Carroll stated that the corporations had been successfully and properly revived, filings had been properly reflected, and errors since the 2004 filings were inadvertent and innocuous. They argued, therefore, that the record BSR has submitted is incomplete and that the characterization of the corporate activity and filings remain improper is incorrect.
- 7. Counsel for LGC, its affiliates and Maura Carroll also represented, without challenge, that independent counsel had been retained to advise the governing boards of the Local Government Center Health Trust, Inc and New Hampshire Municipal Association Property-Liability Trust, Inc and its affiliates as to representational and conflict of interest issues raised by BSR's motion.
- 8. Counsel for LGC, its affiliates and Maura Carroll also represented that LGC, Inc. and Maura Carroll are familiar with the issues raised by the BSR petition, have had access and opportunity to consult with independent counsel.
- 9. Further, counsel represented that the governing boards of all entities had subsequently indicated to him that they wished to proceed with the existing legal representation relationship and had memorialized that desire by, in the case of the subject LGC affiliated companies, in adopted resolutions.
- 10. The BSR acknowledges that it is premature to contest specific violations alleged to have been committed during the company formation or merger actions in or about years 2003 and 2004 by the LGC and its affiliates and Maura Carroll in this procedural hearing.
- 11. The BSR acknowledges that the presiding officer did not request the submission of any requests for findings of fact and rulings of law and requested that those submitted be disregarded and held in abeyance at this time.

JURISDICTION

The secretary of state is responsible for and is granted the authority to conduct adjudicatory proceedings and hearings related to violations of RSA 5-B (the "Pooled Risk

Management Programs" law and RSA 421-B (the "Securities" law). The secretary of state may delegate this responsibility to a presiding officer, and the authority and jurisdiction to conduct such proceedings is exclusive. (See RSA 5-B:4-a,I and RSA 421-B:26-a,I). The presiding officer shall have comprehensive authority to conduct hearings and render decisions on motions. (See RSA 421-B:26-a,XIV.

DECISION AND ORDER

Based on the facts made through uncontroverted offers of proof, we find no basis on the offers of proof provided that would eliminate the subject Respondents', LGC and its affiliates and Maura Carroll, constitutional right to counsel.

Therefore, the motion is denied and no requests for the parties submission of specific findings of fact and rulings of law having been made by the presiding officer, any submitted and held in abeyance during the pendency of this motion hearing are hereby dismissed and stricken from the record.

So Ordered, this 4th day of November, 2011

Donald E. Mitchell, Esq. Bar #1773

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Presiding Officer

SERVICE LIST

cc: Earle F. Wingate, III, Esq. Kevin B. Moquin, Esq. Adrian S. Larochelle, Esq. William C. Saturley, Esq. Brian M. Quirk, Esq. David I. Frydman, Esq. Michael D. Ramsdell, Esq. Joshua M. Pantesco, Esq. Mark E. Howard, Esq. Jaye L. Rancourt, Esq.